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OFFICE OF PETITIONS

In re Patent No. 8,028,731	:
Issued: October 4, 2011	: LETTER REGARDING
Application No. 10/585,068	: PATENT TERM ADJUSTMENT
Filed: June 7, 2007	:
Attorney Docket No. 07040.0265	:

This is a decision on the REQUEST FOR CORRECTION OF PATENT TERM ADJUSTMENT filed on December 4, 2011, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 231 days to 441 days.

The request for review of the patent term adjustment is **DISMISSED**.

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer**, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The patent term adjustment indicated in the patent is properly reflected.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on June 30, 2009 and ends on November 23, 2010, the day before the RCE was filed, the B delay would be 511 days. See 35 U.S.C. 154(b)(1)(B)(i). However, patentee fails to account for the filing of a Notice of Appeal on April 28, 2010, and the subsequent filing of the RCE on November 24, 2010. The 511 days of the over three year period therefore would be consumed by appellate review, beginning on April 28, 2010 and ending on November 24, 2010. The time for appellate review is excluded (511-210); thus the "B delay is 301 days. See 35 U.S.C. § 154(b)(1)(B)(ii). As such, the patent term adjustment is 231 days (158 "A delay days" + 301 "B delay days" (511-210) - 228 Applicant delay days), not 441 days.

The Office acknowledges the submission of the required fee of \$200.00 set forth in 37 CFR 1.18(e).

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

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